UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA

State of Oklahoma, et al.,)
Plaintiffs,) Civil No. 05-CV-0329 GKF-SAJ
v.)
Tyson Foods, Inc., et al.,)
Defendants.)

CARGILL DEFENDANTS' MOTION TO ENFORCE COMPLIANCE WITH JANUARY 16, 2008 ORDER AND TO STRIKE PLAINTIFFS' MOTION FOR SANCTIONS Expedited Consideration Requested

Defendants Cargill, Inc. and Cargill Turkey Production, LLC ("the Cargill Defendants") move the Court to enforce the terms of its January 16, 2006 Minute Order and accordingly to strike Plaintiffs' Motion for Sanctions against the Cargill Defendants [Dkt. 1469]. Inasmuch as Plaintiffs' motion for sanctions seeks expedited consideration, the Cargill Defendants likewise seek expedited consideration of this motion.

PROCEDURAL BACKGROUND

As the Court is aware, Plaintiffs and the Cargill Defendants have several longstanding disputes concerning their respective Rule 30(b)(6) deposition notices to each other. As relevant here, the Cargill Defendants and Plaintiffs had brought crossmotions concerning Plaintiffs' refusal to provide a date for a 30(b)(6) deposition of Plaintiffs' representative on a number of issues. (Dkt. Nos. 1270, 1309.) In its Order of

December 7, 2007, the Court held those motions in abeyance and directed the parties "to file motions to withdraw the motions or status report advising what issues remain unresolved on or before January 11, 2008." (Dec. 7, 2007 Order at 2: Dkt. No. 1409.)

On January 11, 2008, both the Cargill Defendants and Plaintiffs filed status reports with the Court. (Dkt. Nos. 1452 and 1453.) In their report, the Cargill Defendants stated:

- 8. Due to the Plaintiffs' unwillingness to agree to a mutual continuance of 30(b)(6) depositions until after the preliminary injunction hearing and the extreme prejudice that would result to all Defendants in this matter by the necessity of preparing for and attending depositions that appear to be unnecessary to Plaintiffs' burden of proof in the upcoming preliminary injunction hearing, the Cargill Defendants request that this Court take no action on either Cargill Defendants' Motion to Compel Plaintiffs to Designate Deponents Under Rule 30(b)(6), Dkt. No. 1270, or the State of Oklahoma's Motion for Protective Order Regarding the Conduct of 30(b)(6) Depositions of the State, Dkt. 1309 until after the conclusion of the preliminary injunction hearing scheduled for February 19, 2008 through March 5, 2008.
- 9. In the alternative, the Cargill Defendants request that this Court issue an Order staying the depositions requested by Plaintiffs in their December 21, [2007] notices, pursuant to Fed. R. Civ. P. 26(b)(2), until the hearing on the preliminary injunction is complete. Following the hearing the Cargill Defendants will make witnesses available to the Plaintiffs for deposition prior to April 1, 2008, and requests that Plaintiffs do the same.

(Dkt. No. 1452 at 3-4.) In response to the Cargill Defendants' status report, Plaintiffs filed a motion asking the Court to strike paragraph 9 of that report (Dkt. No. 1457), arguing that the Cargill Defendants' request in paragraph 9 for relief in the form of a stay inappropriately addressed Plaintiffs' 30(b)(6) deposition notices to the Cargill Defendants and constituted an improper motion. (See Dkt. No. 1457 at ¶¶ 1-3.)

On January 16, 2008, the Court issued a Minute Order that stated in its entirety:

At the direction of Sam A. Joyner, U.S. Magistrate Judge, it is hereby ordered that:

Based upon the status reports [Dkts. 1452 & 1453], filed on 1/11/08, Plaintiff's Motion for Protective Order [Dkt. 1309] and Cargill Defendants' Motion to Compel [Dkt. 1270] are stricken, to be refiled should meet and confers fail to resolve the issues, following hearing on preliminary injunction. Plaintiff's Motion to Strike [Dkt.1457] is denied as moot.

(Minute Order of Jan. 26, 2008: Dkt. No. 1462.) Correspondence between the parties' attorneys concerning the depositions continued, as evidenced in the attachments to Plaintiffs' motion for sanctions. (See Dkt. Nos. 1469-2 through 1469-10.) After the close of business on Friday, January 25, Plaintiffs filed their motion for sanctions. (Dkt. No. 1469.)

DISCUSSION

Plaintiffs' motion for sanctions against the Cargill Defendants misstates the facts and suffers from a number of procedural and substantive infirmities that the Cargill Defendants will detail should the need arise. As a threshold matter, however, the Court should strike the motion as flatly inconsistent with the Court's Minute Order of January 16, 2008. The timing of Plaintiffs' motion and the character of their requested relief make plain that Plaintiffs' true purpose is, once again, the harassment of the Cargill Defendants and the distraction of their attorneys from the preparation needed to meet and defeat Plaintiffs' legally complex and expert-intensive motion for preliminary injunction.

¹ By way of example only, Plaintiffs' motion (1) omits any mention of the Cargill Defendants' repeated offers of a fully prepared 30(b)(6) witness as early as August 2007 (e.g., Dkt. No. 1257-5); (2) offers no excuse for Plaintiffs' months-long delay—until the Defendants were deep in preparation of their responses to Plaintiffs' surprise PI motion—to renote the 30(b)(6) depositions, (3) fails to identify a single specific piece of evidence Plaintiffs intend to seek in a Cargill 30(b)(6) deposition that is necessary to the Pl motion, and (4) far overreaches any sanction conceivably authorized by Rule 37 in the procedural posture presented here.

The Court's January 16, 2008 Minute Order demonstrates the Court's intention to defer the issue of the 30(b)(6) depositions, both Plaintiffs' and the Cargill Defendants', until *after* the hearing on the motion for preliminary injunction. The Court's Order states that it is "based upon" the parties' status reports (Dkt. No. 1462), status reports that included the Cargill Defendants' express request for a stay of Plaintiffs' 30(b)(6) depositions until after the conclusion of the predictably intense pre-PI hearing activity. (Dkt. No. 1453 at ¶ 9.) Indeed, Plaintiffs themselves directed the Court's attention to that very paragraph by pointing out its request for relief and moving to strike it. (See Dkt. No. 1457.)

Given this background, the Minute Order necessarily defers until after the PI hearing not only the motions concerning the Cargill Defendants' 30(b)(6) notices [Dkts. 1270 and 1309]—which were, after all, the only motions actually pending concerning these issues—but also the related matters addressed by the Reports—by *both* sides' reports. Indeed, but for the Cargill Defendants' detailed Report outlining the time shortages created by the impending PI hearing, the Court would have had no reason to adopt the PI hearing as a date to bring any dispute back to the Court.

The Court's denial of Plaintiffs' motion to strike as moot likewise demonstrates the Court's intention to defer all 30(b)(6) issues until after the PI hearing. Plaintiffs' directed their motion at the Cargill Defendants' request for a stay of Plaintiffs' 30(b)(6) deposition until completion of the PI hearing. (See Dkt. No. 1457 at ¶¶ 1-3.) The Court denied Plaintiffs' motion as "moot" (Dkt. No. 1462), that is, "of no practical significance; hypothetical or academic." Black's Law Dictionary at 1024 (7th ed. 1999). The only

way Plaintiffs' motion to strike paragraph 9 of the Cargill Defendants' report could have become "moot," of course, was if the Minute Order had *already* addressed the relief that the Cargill Defendants sought in that paragraph. And so it had; as noted above, the first portion of the Minute Order had already effectively ruled on the issue by deferring all 30(b)(6) disputes to a later, less hectic period.

Any other reading of the Court's Order makes no sense. The Cargill Defendants can conceive of no rational reason that the Court would defer the Cargill Defendants' Rule 30(b)(6) depositions of Plaintiffs until after the PI hearing, and yet permit Plaintiffs—who brought their PI motion against Cargill without ever taking a substantive deposition of a Cargill representative—to compel their own 30(b)(6) depositions of the Cargill Defendants in the midst of the Defendants' intensive efforts to defend against Plaintiffs' PI motion. The Court would not logically permit Plaintiffs to take discovery that their filing of the PI motion demonstrates they do not need while denying similar discovery to the parties who must respond to that motion. The Court's Minute Order did not intend such an unfair result, but intended to treat the parties equally. The Court Order was another statement of the "goose and gander" rule imposed by the Court on all parties early on.

This conclusion is also consistent with the Court's deferral of another recent motion by Plaintiffs that raised issues irrelevant to the PI motion and would only distract the parties from their preparations for the hearing on the motion. (See, e.g., Dkt. No. 1448: Jan. 8, 2008 Minute Order deferring further briefing on Plaintiffs' motion to expand the temporal scope of discovery.) The Cargill Defendants conclude that the Court

intends the parties to focus their present efforts on the discovery and issues relating to the impending PI motion, and not to divert those efforts to briefing motions and defending depositions that have no bearing on that motion.

CONCLUSION

For the reasons stated above, the Cargill Defendants respectfully urge the Court to enforce its Minute Order of January 16, 2008, to strike Plaintiffs' Motion for Sanctions against the Cargill Defendants (Dkt. No. 1469), and to spare the Cargill Defendants the further burden of responding on the merits of the motion. Should the Court deny this motion to strike, the Cargill Defendants request that the Court provide them with a reasonable period in which to respond to the substance of Plaintiffs' motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 28th day of January, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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